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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,559	03/30/2004	Jeffrey G. Gibson	011361.00089	6881
28316	7590	12/01/2006	EXAMINER	
BANNER & WITCOFF LTD., ATTORNEYS FOR CLIENT NO. 004954 28 STATE STREET - 28TH FLOOR BOSTON, MA 02109				JOHNSON, MATTHEW A
ART UNIT		PAPER NUMBER		
		3682		

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/814,559	GIBSON, JEFFREY G.	
Examiner	Art Unit		
Matthew Johnson	3682		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 5/24/2005.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-24 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-24 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5)  Notice of Informal Patent Application

6)  Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 8,9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "secured to a front of a dash of a vehicle" is grammatically awkward and is unclear.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1,3,4,6-17,19,20,22-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Smith (USP-6,655,199).

Re clms 1,3,4: Smith discloses a drive by wire assembly for a motor vehicle comprising a(n):

- foot-engaging member (12) configured to be engaged by a foot of a user, the foot engaging member configured to remain substantially stationary when engaged by a foot of user,
- force measuring sensor (24) secured to foot engaging member (12) and configured to provide an output signal based on a force applied by a foot of a user (C2 L30-34 & L47-53)
- force measuring sensor (24) comprising either a load cell or a Hall-effect sensor (C2 L34-36) (Note: according to Omega.com, a load cell manufacturer, a piezoelectric is a type of load cell)

Re clms 6-17,19,20,22-24: Smith discloses a drive by wire assembly for a motor vehicle wherein:

- the foot engaging member (12) is a suspended pedal with an arm (18) having a foot pad (20) secured on the first end and a mounting member (14) secured to a second end
- the foot engaging member comprises a cover (20) for the foot engaging member (C2 L26-29)
- the electronic control unit (22) is configured to receive the output signal from the force measuring sensor (24) through signal conditioning circuitry (32) (C2 L47-63)

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5,21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (USP-6,655,199) in view of Yamaki et al. (USP-6,633,157).

Re clms 5,21: Smith discloses all of the claimed subject matter as described above.

Smith does not disclose that a spring and magnet assembly excites the Hall-effect sensor.

Yamaki et al teaches a Hall-effect sensor excited by a magnet and a spring for the purpose of increasing the accuracy of detection of a displacement (C2 L56-67).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to excite the Hall-effect sensor in the device of Smith, using a magnet and a spring as taught by Yamaki, for the purpose of increasing the accuracy of detection of a displacement (C2 L56-67).

7. Claims 2,18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (USP-6,655,199) in view of Mendis (USP-6,571,662).

Smith discloses all of the claimed subject matter as described above.

Smith does not disclose a force measuring sensor comprising a strain gauge.

Mendis teaches the use of a strain gauge (18) in a drive by wire force measuring pedal for the purpose of measuring the amount of flexure of the pedal (2) (C2 L42-45).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ a strain gauge, as taught by Mendis, in the device of Smith for the purpose of measuring the amount of flexure of the pedal (C2 L42-45).

### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew Johnson whose telephone number is 571-272-6917. The examiner can normally be reached on Monday - Friday 8:30a.m. - 5:00p.m. EST.

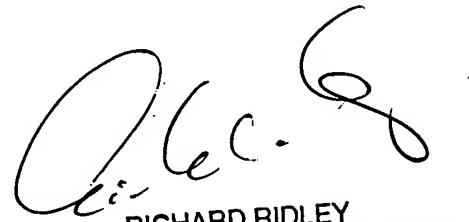
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3682

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MAJ

MAJ 11/29/2006



RICHARD RIDLEY  
SUPERVISORY PATENT EXAMINER